## STATE OF CO

Roy Romer, Governor Patricia A. Nolan, MD, MPH, Executive Director

Dedicated to protecting and improving the health and environment of the people of Colorado

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Colorado Department of Public Health and Environment

December 21, 1994

Ms. Melanie Pallman USEPA, Region VIII, NPDES Branch 999 18th Street, Ste. 500 Denver, CO 80202-2466

ENFORCEMENT SENSITIVE

Re:

USEPA HQ Exceptions List Rico Development Corporation CO-0029793 Dolores County, Colorado

Dear Melanie;

Although Rico Development Corporation ("RDC") has remained in Significant Non-Compliance for two consecutive quarters with no further formal enforcement action by the Water Quality Control Division ("WQCD"), the WQCD requests that you not include RDC on the Exceptions List forwarded to USEPA HO.

The WQCD has not taken further formal enforcement action because the past two Notices of Violation and Cease and Desist Orders ("NOV&CDOs"), issued on June 29, 1993, and January 18, 1994, have not effectively encouraged compliance. In fact, the second NOV&CDO cited violations of the previous NOV&CDO. The legal contact we have listed is denying responsibility. Therefore, the WQCD has requested assistance from the Attorney General's Office ("AGO") in determining the legally responsible party(-ies) and the best course of action to take to compel compliance. Due to limited resources, the WQCD has not yet been advised by the AGO as to the recommended methods for forcing compliance. The AGO has committed to responding to our request by January 31, 1995.

Meanwhile, if an injunction is advised, the WQCD will likely need to issue an NOV&CDO to cite violations since the previous NOV&CDO, including violations of that NOV&CDO. So, while awaiting advice from the AGO, the WQCD will draft this document and assess a penalty for the previous NOV&CDOs.

In summary, due to the uniqueness of this situation, the WQCD is requesting RDC not be included on the Exceptions List. If you have any questions, or need further information or clarification, please contact me at 692-3603.

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Sincerely,

Kathleen Kalamen

Industrial Enforcement Engineer

WATER QUALITY CONTROL DIVISION

Permits and Enforcement Section

cc:

Amelia Whiting, AGO Pat Nelson, WQCD

Jim Horn, WQCD, Field Support